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FILED
JUN 2 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 117

HENRY PIRTLE,
Petitioner,

vs.

H. B. BROWN, CHRISTIAN KOPP and W. F. WARREN, Individually, and as Judges of Election for the Fifth Civil District of Grundy County, Tennessee, for the precinct or voting place at the Courthouse in Tracy City, Tennessee, and ROY H. BEELER, as Attorney General and Reporter of the State of Tennessee, in his official capacity,
Respondents,

TRANSCRIPT OF RECORD

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

CRAMPTON HARRIS,
727 Frank Nelson Bldg.,
Birmingham, Alabama,
Attorney for Petitioner.

NAT TIPTON,
Asst. Attorney General,
Nashville, Tennessee,
Attorney for Respondents.

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United States District Court

Middle District of Tennessee

Winchester Division

HENRY PIRTLE,
Plaintiff,

vs.

H. B. BROWN, CHRISTIAN KOPP and W. F. WARREN, Individually, and H. B. BROWN, CHRISTIAN KOPP and W. F. WARREN as Judges of Election for the Fifth Civil District of Grundy County, Tennessee, for the Precinct or Voting Place at the Courthouse in Tracy City, Tennessee,
Defendants.

BILL OF COMPLAINT

(Filed September 8, 1939)

1. Jurisdiction is founded on the existence of a Federal question. The action arises under the Constitution and Laws of the United States, and particularly under Article I, Section 2, and the Fourteenth Amendment to the Constitution of the United States, and Title 28 of the Judicial Code of the United States, Section 41, sub-paragraphs 11 and 14, and Title 28 of the Judicial Code of the United States, Section 400.

2. Plaintiff, HENRY PIRTLE, is a male citizen of the United States, and a resident of Tracy City, Grundy County, Tennessee, and is twenty-five (25) years of age.

Plaintiff lives in the Fifth Civil District of Grundy County, Tennessee. The voting place of a resident living at the place where the plaintiff now lives is at the Courthouse in Tracy City, Grundy County, Tennessee.

Plaintiff has continuously lived at the place where he now lives since he became twenty-one (21) years of age, and has heretofore voted at the polling place at the Courthouse in Tracy City, Grundy County, Tennessee, provided for voters of the Fifth Civil District, having voted at that place in that District in the Presidential Election of 1936.

3. The Defendants, H. B. Brown, Christian Kopp and W. F. Warren, have been named by the Commissioners of Elections for Grundy County, Tennessee, as Judges for the precinct or voting place at the Courthouse in Tracy City, Tennessee, where voters of the Fifth Civil District will cast their votes to superintend the election at that precinct or voting place in a special election to be held September 13, 1939.

4. The Governor of the State of Tennessee has called a special election for the Third Congressional District of Tennessee on September 13, 1939, at which election there will be elected a successor in the Congress of the United States to fill out the unexpired term of the late Honorable Sam D. McReynolds, deceased.

5. The special election hereinabove referred to is called for the sole and specific purpose of electing a representative from the Third Congressional District of Tennessee in the Congress of the United States and no other office will be filled than the vacancy in the Congress of the United States from the Third Congressional District of Tennessee, and no persons shall be voted for in said election except candidates to fill said vacancy. In short, the special election called for September 13, 1939 is not to fill any local or State office whatsoever.

6. Article Four, Section I of the Constitution of the State of Tennessee provides that "every male person of

the age of 21 years, being a citizen of the United States, and a resident of Tennessee for twelve months, and of the County wherein he may offer his vote for six months next preceding the day of election, shall be entitled to vote for members of the General Assembly—and other civil officers for the County or District in which he resides; and there shall be no qualifications attached to the right of suffrage except that each voter shall give to the Judges of election, where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the Legislature shall prescribe, and at such time as may be prescribed by law, without which his vote cannot be received."

It further provides that all male citizens of the State shall be subject to the payment of poll taxes within such ages as may be prescribed by law.

7. The Legislature of the State of Tennessee has provided in Section 2029 of the Code of Tennessee, 1934, Annotated, that: "The satisfactory evidence to be furnished by the voter to the Judges of the election, whether general or special, whether National, State, County, or Municipal, that he has paid the poll tax, contemplated by the Constitution, assessed against him, if any, for the year next preceding said election, shall consist of the original poll tax receipt, or a duly certified duplicate and copy of the same, or the duly authenticated certificate set out in Section 2042—or shall make affidavit in writing, and signed by the voter that he has paid his poll tax and that his receipt is lost or misplaced, which affidavit shall be filed with the said judges,—or that his name appears upon the certified list of voters of his voting precinct, which list, as well as one for each District in the County, is to be made out and furnished by the Trustee or other officer charged with such duties of each County to the Secretary of the State."

The Legislature of the State of Tennessee assessed a poll tax for the year 1938 of $2.00 against all male citizens of the State of Tennessee between the ages of 21 and 50 years.

8. This Plaintiff is a male citizen of the State of Tennessee of the age of 25 years and is a citizen of the United States, and has been a resident of the State of Tennessee and of Grundy County, Tennessee, continuously for the past four years, and will remain such a resident up to and after the day of the special election herein referred to, to-wit: September 13, 1939.

This Plaintiff, however, has not paid the poll tax assessed against him under the Laws of the State of Tennessee, for the year 1938.

9. This Plaintiff desires to vote for a representative in the Congress of the United States from the Third Congressional District of Tennessee in the special election hereinabove referred to. On September 4, 1939, this Plaintiff addressed a communication to each of the defendant judges of election for the precinct or voting place at the Courthouse, Tracy City, Grundy County, Tennessee, informing said defendant judges of his desire to vote and of the fact that he had fulfilled all of the requirements of suffrage exacted by the Constitution and Laws of the State of Tennessee, except payment of the poll tax for the year next preceding the election and asked each of said judges whether or not he would be allowed to vote in said special election, which inquiry more fully appears from Exhibit "A", hereto attached and made a part hereof, the same as if set out herein.

10. Plaintiff further alleges that said defendants informed him, in substance, that he would not be allowed to cast a vote because he had not paid his poll tax, all as more fully appears in Exhibit "B", hereto attached and made a part hereof the same as if set out herein.

WHEREFORE, Plaintiff demands that the Court adjudge:

1st. That Plaintiff is entitled to vote for a representative in the Congress of the United States from the Third Congressional District of Tennessee in the special election to be held on September 13, 1939;

2nd. That each of the Defendants, H. B. BROWN, CHRISTIAN KOPP and W. F. WARREN, be restrained from pro-

hibiting, molesting, interfering with or preventing the Plaintiff from voting in said special election and be enjoined from informing, directing, or advising in any manner any clerk or election official to deny the Plaintiff the right to cast his vote in said election, or to refuse to receive the vote of the Plaintiff in said election.

3rd. That Plaintiff is entitled to vote in all subsequent elections to elect Senators from the State of Tennessee and to elect representatives in the Congress of the United States, from the State of Tennessee, so long as Plaintiff fulfills the requirements of residence prescribed by the Constitution of Tennessee, as a condition of suffrage, regardless of whether or not the Plaintiff shall have paid any poll taxes assessed against him under the laws of the State of Tennessee.

(Signed) HARRIS & BROWN,
(Signed) HERBERT G. B. KING,
Attorneys for Plaintiff.

STATE OF TENNESSEE }
GRUNDY COUNTY , } ss:

Before me, the undersigned authority in said County and State aforesaid, personally appeared HENRY PIRTLE who being by me first duly sworn deposes and says that he is the Plaintiff in the above styled cause and that the facts stated in the foregoing Complaint are true and correct.

(Signed) HENRY PIRTLE.

Sworn to and subscribed before me, this 8th day of September, 1939.

(SEAL) (Signed) MADGE ANDERSON,
Notary Public.

My commission expires May 3, 1943.

EXHIBIT "A"

Dear Sir:

I am informed that you will be a judge at the voting box at the Court House at Tracy City, Tennessee, where the voters of the Fifth Civil District will cast their votes in the special election called for September 13th, 1939 by the Governor of the State of Tennessee for the purpose of electing a Representative from the Third District of Tennessee in the House of Representatives of the United States. For that reason I write this letter to you and make the following inquiry of you:

I am twenty-five years of age. I have lived in Grundy County, Tennessee, all my life. By occupation I am a coal dealer, with my business in Grundy County, Tennessee. I live at Tracy City and the place where I should vote is the box at the Court House at Tracy City in which the voters of the Fifth Civil District cast their votes. I have been engaged in business and have been earning my living since I was twenty-one years of age and before. I voted in the Presidential Election in 1936 at the polling place in the Court House at Tracy City, Grundy County, Tennessee, and my residence has been in the same civil district continuously since that time.

I make this inquiry of you: will I be allowed to vote in the special election on September 13th next. I make this inquiry because I have not paid the poll tax required of me by the laws of the State of Tennessee.

I call your attention to the fact that this election is called to elect a Representative from the Third District in the House of Representatives of the United States and is not called for the election of any other official, state or federal.

I feel that I have a perfect legal right to vote for a Representative in the Congress of the United States and in this special election, regardless of the fact that I have not paid my poll tax.

Please answer this inquiry at your earliest possible convenience.

Sincerely yours,

(Signed) HENRY PIRTLE.

EXHIBIT "B"

Henry Pirtle,
Tracy City, Tennessee

Dear Sir:

I have before me your letter of September 4 asking me whether you will be allowed to vote in the special election called by the Governor of Tennessee on September 13, 1939. You state in your letter that you are a resident citizen of Grundy County, that your business is in Grundy County, and that you have heretofore voted in the Presidential Election of 1936. In fact, your letter seems to me to fulfill every requirement to entitle you to vote in this election except one. You state that you have not paid your poll tax. That payment is a condition precedent to your right to vote in the special election on September 13. My answer to your question, therefore, is that you will not be allowed to cast a vote in the voting place in which you normally would vote if you had paid your poll tax.

In making this answer to your question, I ask that you do not take it as necessarily expressing my views, but rather as an expression of my opinion of what the law requires me to do. Regardless of how I personally feel about the payment of poll tax as a condition precedent to the right of suffrage, it is my duty as an election official to follow the laws of the State of Tennessee. This letter, therefore, is a statement of what I, as an election official, will do.

Sincerely yours,

(Copy) Signed H. B. Brown.
(Copy) Signed Christian Kopp.
(Copy) Signed W. F. Warren.

(3 identical letters)

Bond

We, the undersigned, Defendants in this Cause, do hereby accept service of the foregoing Complaint and do waive any and all other service and do hereby consent that this Cause may be set down for hearing on either Monday, September 11, 1939, or Tuesday, September 12, 1939, said hearing to be at the United States District Courthouse in Nashville, or at such other place as the Judge may designate.

Dated, this September 8th, 1939.

(Signed) W. G. Warren,
(Signed) H. B. Brown,
(Signed) Christian Kopp.

BOND

(Filed September 11, 1939)

UNITED STATES DISTRICT COURT
Middle District of Tennessee

Henry Pirtle, *Plaintiff,* vs. H. B. Brown, Christian Kopp and W. F. Warren, Ind., Etc., *Defendants.*	No. 9 Winchester Civil

We, Henry Pirtle, as principal, and United States Fidelity & Guaranty Co., as surety, acknowledge our-

selves indebted to H. B. Brown, Christian Kopp and W. F. Warren, Ind. & Etc., in the penal sum of ($250.00) Two Hundred and Fifty Dollars, good and lawful money; to be void, however, if the said Plaintiff shall prosecute with effect an action which it is about to commence in the United States District Court for the Middle District of Tennessee, against H. B. Brown, Christian Kopp and W. F. Warren, Ind., and H. B. Brown, Christian Kopp, W. F. Warren, as Judges of Election, or, if it fails to do so, shall pay all such costs and damages as may be awarded against it by the court having cognizance thereof.

(Signed) Henry Pirtle,
Principal,
(Signed) United States Fidelity & Guaranty Co.,
Surety,
By (Signed) W. D. Gale,
Attorney-in-Fact.

(CORPORATE SEAL)

PETITION OF ROY H. BEELER, ATTORNEY GENERAL AND REPORTER OF TENNESSEE, TO BE PERMITTED TO INTERVENE IN THE ABOVE STYLED CAUSE

(Filed September 11, 1939)

Comes Roy H. Beeler, in his capacity as Attorney General and Reporter of the State of Tennessee, and respectfully shows to the Court as follows:

I.

That he is the duly elected, qualified and acting Attorney General of the State of Tennessee.

II.

That the above captioned suit was duly filed in this Court by the plaintiff against H. B. Brown, Christian Kopp and W. F. Warren, who are averred therein to be Judges of Election for the 5th Civil District of Grundy County, Tennessee, the averred residence of the plaintiff.

III.

That the purpose of the suit is apparently to obtain a declaration at the hands of this Court that Section 2029 of the Code of Tennessee of 1932 and that Article IV, Section 1 of the Constitution of the State of Tennessee, each of same requiring the payment of poll tax prior to voting, are invalid as being in conflict with Article I, Section 2 of the Constitution of the United States, and likewise in conflict with Amendment 14 to the Constitution of the United States.

IV.

That the parties named as defendants hereto are individual citizens of this state who have been selected as Judges of Election in a special election to be held in the Third Congressional District on September 13, 1939, and have no real interest in the maintenance and validity of the laws of this state requiring the prepayment of poll tax as a condition precedent to voting and therefore are merely made nominal defendants thereto.

V.

That your petitioner by virtue of his official position is the chief law enforcement officer of the State of Tennessee and as such is vitally interested in maintaining the validity of the above quoted sections from the Constitution of Tennessee and of the Code of Tennessee and

is likewise vitally interested in seeing that there be adequately presented to this Court various arguments and authorities which, in his judgment, tend to maintain the validity of such sections. Copy of the pleading sought to be filed by the petitioner accompanies this petition for intervention.

Premises considered, the petitioner prays that he be permitted to intervene on behalf of the State of Tennessee in this cause and court and to make defense to the suit herein filed in his official capacity as such Attorney General and Reporter and that he have general relief.

Notice of the filing of said suit having come to your petitioner's attention for the first time on September 8, 1939, service of copy of this intervening petition upon the parties to this suit has not been made at the present time but will be made at the earliest convenient opportunity.

(Signed) Roy H. Beeler,
Attorney General and Reporter
for the State of Tennessee.

State of Tennessee, }
Davidson County } ss:

I, Nat Tipton, make oath in due form of law that I am one of the Assistant Attorneys General of the State of Tennessee, I am familiar with the facts stated in the foregoing petition and that the matters stated therein as facts are true to the best of my knowledge, information and belief. I further make oath that this affidavit is made by me rather than by petitioner, Roy H. Beeler, as Attorney General of the State of Tennessee, because the said Roy H. Beeler is at the present time absent from the State of Tennessee and will continue to be so absent until on or about October 1, 1939, and therefore unavailable for the purpose of making this affidavit.

(Signed) Nat Tipton.

Subscribed and sworn to before me, this 9th day of September, 1939.

(seal) (Signed) Clara S. Gold, *Deputy Clerk.*

ANSWER OF ROY H. BEELER, ATTORNEY GENERAL AND REPORTER OF THE STATE OF TENNESSEE

Comes now Roy H. Beeler, Attorney General and Reporter of the State of Tennessee, having first prayed for and obtained leave to intervene in the above styled cause and court in his official capacity as such Attorney General and Reporter, and for answer to the complaint of the plaintiff says:

I.

That Section 2 of Article I of the Constitution of the United States provides that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature," thereby recognizing the right of the State Government to impose limitations upon the right to vote for members of Congress.

II.

Further answering he says that the right to vote in elections is not conferred by any provision of the Constitution of the United States but on the contrary, emanates from the states themselves and that therefore plaintiff's attack upon the validity of the poll tax statutes and constitutional provisions of the State of Tennessee is not well founded since said statutes and constitutional provisions do not contravene any provisions of the Constitution of the United States since that document leaves to the several states the power of fixing the qualifications of electors of the most numerous branch of the State Legislature.

III.

Further answering, this respondent avers that the levying of a poll tax by the state in the amount of $1.00 and the levying of a poll tax in like amount as permitted by statute by the County of Grundy does not constitute an unreasonable limitation upon the right to vote but on the contrary, constitutes a reasonable restriction upon the right of suffrage.

And now having fully answered, this respondent prays that the plaintiff's petition be dismissed and that he be decreed to be entitled to no declaratory relief at the hands of this Court.

(Signed) Roy H. Beeler,
Attorney General and Reporter for the State of Tennessee.

(Signed) E. F. Smith,
" W. F. Barry,
" Nat Tipton.

Service of copies of Intervening Petition duly acknowledged and the five-day requirement of service expressly waived.
This September 11, 1939.

(Signed) Crampton Harris,
Of Counsel for Plaintiff.

OPINION

(Filed September 11, 1939)

The plaintiff brings this action to assert his alleged right to vote for a member of the House of Representatives of the United States Congress, without having first paid a poll tax as provided by the Constitution and laws enacted pursuant thereto of the State of Tennessee.

1. Section II of Article I of the Constitution of the United States provides as follows:

Section II: The House of Representatives shall be composed of members chosen every second year by the people of the several states and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation from any state the Executive Authority thereof shall issue writs of Election to fill such vacancies.

2. Section I of Article IV of the Constitution of the State of Tennessee fixes the qualifications of Electors voting for electors of the most numerous branch of the State legislature as follows:

Section I: Every male person of the age of twenty-one years being a citizen of the United States and a resident of the State for twelve months, and of the County wherein he may offer his vote for six months next preceeding the day of the election, shall be entitled to vote for members of the General Assembly, and other civil officers for the county or district in which he resides; and there shall be no qualification attached to the right of suffrage except that each voter shall give to the judges of election where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the Legislature shall prescribe, and at such time as may be prescribed by law without which his vote cannot be received. And all male citizens of the State shall be subject to the payment of poll taxes and the performance of military duty within such ages as may be prescribed by law.

3. The Legislature of the State of Tennessee in prescribing the period for payment of poll tax as a prerequisite of voting and defining satisfactory evidence of the payment thereof has enacted into law the following:

Section 2027, Code of Tennessee for 1932—Every person in this State who is otherwise a qualified voter under the Constitution and laws, shall as a condition precedent to the exercise of voting, furnish to the judges of election satisfactory evidence that he has paid the poll tax,

if any, assessed against him for the year next preceding the election, not later than sixty days prior to the day of said election, without which his vote shall not be received.

Section 2029 of the Code of Tennessee defines satifactory evidence of the payment of poll tax as being, the original poll tax receipt, or a duly certified duplicate and copy of same, or the duly authenticated certificate provided for by Section 2042 when said tax has been paid to a constable or an affidavit in writing signed by the voter that he has paid his poll tax and the receipt has been lost or misplaced.

We have examined the opinion of the Court in the case of *Breedlove* v. *Suttles,* decided December 6, 1937, and reported in Volume 302 of the United States Reports, at page 277, and we find in that case the appellant contended that the privilege of voting for Federal officers is one to which he was entitled unrestricted by a tax unreasonably imposed through State invasion of his rights as a citizen of the United States; that as such citizen, he was entitled to participate in the choice of electors for the President and Vice-President of the United States and of Senators and Representatives in Congress, and that no State could exercise its taxing power so as to destroy this privilege. The Court held that payment of the poll tax as a prerequisite was not required for the purpose of denying or abridging the privilege of voting; it did not limit the tax to electors. Aliens were not there permitted to vote, but the tax was laid upon them if within the denied class. It was not laid upon persons sixty or more years of age, whether electors or not, and that exaction of payment before registration undoubtedly serves to aid collection from electors desiring to vote, but that use of the State's power is not prevented by the Federal Constitution. Citing the case of *Manguano Company* v. *Hamilton,* 292 U. S. 40.

The Court further held that to make payment of poll tax a prerequisite of voting is not to deny any privilege or immunity protected by the 14th Amendment, and that the privilege of voting is not derived from the United

States, but is conferred by the State and save as restrained by the 15th and 19th Amendments, and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate. The Court also held in that case that the payment of poll taxes as a prerequisite of voting was not repugnant to the 19th Amendment.

We are of the opinion that the decision of the Court in the Breedlove case is binding upon this Court, and the questions decided in that case, we think, are the same as in the present case.

We realize that the awarding of a declaratory judgment is within the discretion of the Court. We further realize that the time limit is for consideration. Yet, the importance of the question raised is such that we think that we should exercise a discretion and determine the case on its merits.

Therefore, a declaratory judgment will be prepared and entered in conformity with this opinion; the application for the issuance of an injunction is denied.

(Signed) ELMER D. DAVIES,
United States District Judge,

(Signed) LESLIE R. DARR,
United States District Judge.

ORDER PERMITTING INTERVENTION AND FINAL DECREE

(Filed October 6, 1939)

In this cause came Roy H. Beeler, Attorney General and Reporter of the State of Tennessee, and presented his petition to be permitted to intervene in his official capacity, accompanying said petition by copy of an answer which he proposed to file in this cause and Court and counsel for the plaintiff having expressly waived in open court service upon the plaintiff of said intervening petition and likewise, having expressly waived in open court the five-day provision for such service and having consented to the filing of such intervening petition, it is, therefore, ordered, adjudged and decreed by the Court that said intervening petition be and the same is hereby granted and Roy H. Beeler permitted to intervene in this suit and to file the answer tendered by him with such intervening petition.

Thereupon came on this cause to be heard before the Honorable Elmer D. Davies, Judge of the District Court of the United States for the Middle District of Tennessee, upon the petition of the plaintiff and the answer of the intervenor, Roy H. Beeler as Attorney General and Reporter thereto, when the Court adjudged and decreed as follows:

1. That the plaintiff, Henry Pirtle, is a resident of Grundy County, Tennessee, and a citizen of the State of Tennessee and of the United States and that he is more than 21 years of age and possesses all the qualifications necessary to constitute him a legal voter for members of Congress and members of the most numerous branch of the General Assembly of Tennessee, except that the said Henry Pirtle, although liable for poll tax under the statutes of Tennessee, has not paid the same more than sixty days prior to September 13, 1939.

2. That the Governor of this state has duly called a special election to be held at all voting precincts in the Third Congressional District on September 13, 1939, for

the purpose of electing a Representative to Congress, such special election being made necessary by the death of the incumbent of such office. The Court further finds that Grundy County, of which plaintiff is a resident and citizen, is located in the Third Congressional District and that an election will be duly held in Grundy County on said date.

3. The Court finds that the plaintiff contends that the provisions of the Tennessee Constitution and statutes requiring the prepayment of poll tax as a condition precedent to the right of the plaintiff to vote for said Representative to Congress contravene the implied provisions of the Constitution of the United States in laying a tax upon a privilege secured to the plaintiff as a citizen of the United States by Section 2, Article 1 of the Constitution of the United States and likewise contravene the provisions of the Fourteenth Amendment to the Constitution of the United States by abridging a privilege secured to the plaintiff as a citizen of the United States by Section 2, Article 1 of the Constitution of the United States, and that therefore, under paragraphs 11 and 14 of section 41 of Title 28 of the United States Code Annotated, the District Court has jurisdiction to entertain such claims; and that under section 400 of Title 28 of the United States Code Annotated, the District Court has jurisdiction to render a declaration in this cause.

4. The Court finds and declares as a matter of law pursuant to the opinion of the United States Supreme Court in *Breedlove* v. *Suttles,* 302 U. S. 277, that the provisions of the Constitution and laws of the State of Tennessee, to-wit: Section 1 of Article 4, of the Constitution of the State of Tennessee and Section 2027 of the Code of Tennessee for 1932 do not contravene the provisions, either express or implied, of the Constitution of the United States in requiring the payment of a poll tax as a condition precedent to voting for said representative to Congress, and that, therefore, plaintiff is not entitled to a declaration at the hands of this court to such effect,

but on the contrary the Court finds and declares that pursuant to the opinion above cited the privilege of voting for such representative to Congress is not a privilege secured to the plaintiff by Section 2 of Article 1 of the Constitution of the United States, and that, therefore, the said poll tax is not a tax imposed upon any privilege secured to the plaintiff by the Constitution of the United States and that, since such privilege is not secured to the plaintiff by the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States has no application and the court expressly finds and declares that the said provisions of the Constitution of the State of Tennessee and of the Code of Tennessee are valid and binding on the plaintiff.

5. The Court expressly declares that the plaintiff is not entitled to vote in the special election for members of Congress to be held on September 13, 1939, in the Third Congressional District of Tennessee without the prepayment of poll tax, he being legally liable therefor in the event of the validity of such statutes of Tennessee as apply to him.

6. The Court finds and declares that the plaintiff and his surety upon his cost bond will pay the costs of this proceeding for which execution may issue within the period prescribed by law, unless the issuance thereof be stayed by an appeal.

Done and ordered this the 6th day of October, 1939.

(Signed) ELMER D. DAVIES, *Judge.*

Approved as to form:

(Signed) NAT TIPTON,
Attorney for Intervenor,

HARRIS & BROWN,
By (Signed) CRAMPTON HARRIS,
Attorneys for Plaintiff.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

(Filed November 13, 1939)

Comes the appellant, Henry Pirtle, in the above styled cause and hereby sets forth the points on which he intends to rely on this appeal.

1. The right to vote for members of Congress is a right arising from and fundamentally based on Article I, Section II of the Constitution of the United States.

2. Rights and privileges arising out of the Constitution of the United States are not subject to State taxation in any form.

3. The Fourteenth Amendment to the Constitution of the United States, in prohibiting any State from making or enforcing any law abridging the privileges and immunities of citizens of the United States, renders invalid and unconstitutional the imposition by the State of Tennessee of a poll tax as a prerequisite to the right to vote for members of Congress.

4. Section I of Article IV of the Constitution of the State of Tennessee and Section 2027 of the Code of Tennessee for 1932 do contravene the provisions, either express or implied, of the Constitution of the United States in requiring the payment of a poll tax as a condition precedent to voting for a Representative to Congress.

(Signed) HARRIS & BROWN,
Attorneys for Appellant.

I hereby certify that I have served a copy of the foregoing on General Nat Tipton, Assistant Attorney General of the State of Tennessee.

(Signed) CRAMPTON HARRIS.

BOND

(Filed October 6, 1939)

KNOW ALL MEN BY THESE PRESENTS:

That we, Henry Pirtle, as principal, and the United States Fidelity & Guaranty Company, a corporation, as surety, are held and firmly bound unto H. B. Brown, Christian Kopp and W. F. Warren, Individually, and H. B. Brown, Christian Kopp and W. F. Warren, as Judges of Election for the Fifth Civil District of Grundy County, Tennessee, for the Precinct or voting place at the Courthouse in Tracy City, Tennessee, and Roy H. Beeler, as Attorney-General and Reporter of the State of Tennessee, in his official capacity, their executors, administrators, or assigns and successors in office, in the sum of Two Hundred and Fifty ($250.00) Dollars, lawful money of the United States of America, to be paid unto the said H. B. Brown, Christian Kopp and W. F. Warren, individually, and H. B. Brown, Christian Kopp and W. F. Warren, as Judges of Election for the Fifth Civil District of Grundy County, Tennessee, for the Precinct or voting place at the Courthouse in Tracy City, Tennessee, and Roy H. Beeler, as Attorney-General and Reporter of the State of Tennessee, in his official capacity, their executors, administrators or assigns and successors in office, to which payment, well and truly to be made, we do bind and pledge our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seal and dated, this 6th day of October, A. D., 1939.

WHEREAS, the above named Henry Pirtle has heretofore commenced an action in the United States District Court for the Middle District of Tennessee, Winchester Division, against the said H. B. Brown, Christian Kopp and W. F. Warren, individually, and H. B. Brown, Christian Kopp and W. F. Warren, as Judges of Election for the Fifth Civil District of Grundy County, Tennessee, for the Precinct or voting place at the Courthouse in Tracy

City, Tennessee, which action was transferred to the Nashville Division of said Middle District; and,

WHEREAS, a final judgment and decree was rendered and entered in said cause on the 6th day of October, 1939, and

WHEREAS, the said Henry Pirtle has on this October 6, 1939, filed notice of appeal from said final judgment and decree to the United States Circuit Court of Appeals for the Sixth Circuit;

NOW, THEREFORE, the condition of this obligation is such that if the above named Henry Pirtle shall pay all costs if his appeal is dismissed, or the judgment affirmed, or such costs as the United States Circuit Court of Appeals for the Sixth Circuit may award if the judgment is modified, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in the presence of

HENRY PIRTLE (SEAL)

CRAMPTON HARRIS,
Witness.

UNITED STATES FIDELITY & GUARANTY COMPANY, a Corporation,
By (s) W. D. GALE,
Attorney-in-Fact.

(CORPORATE SEAL)

NOTICE OF APPEAL

(Filed October 6, 1939)

Notice is hereby given that Henry Pirtle, the plaintiff above named hereby appeals to the United States Circuit Court of Appeals for the 6th Circuit from the final judgment entered in this action on October 6th, 1939, as to those parts declaring:

1. That as a matter of law pursuant to the opinion of the United States Supreme Court in Breedlove vs. Suttles, 302 U. S. 277, that the provisions of the Constitution and laws of the State of Tennessee, to-wit: Section 1 of Article 4, of the Constitution of the State of Tennessee and Section 2027 of the Code of Tennessee for 1932 do not contravene the provisions, either express or implied, of the Constitution of the United States in requiring the payment of a poll tax as a condition precedent to voting for said representative to Congress, and that, therefore, plaintiff is not entitled to a declaration at the hands of this court to such effect.

2. That pursuant to the opinion above cited, the privilege of voting for such representative to Congress is not a privilege secured to the plaintiff by Section 2 of Article 1 of the Constitution of the United States, and that, therefore, the said poll tax is not a tax imposed upon any privilege secured to the plaintiff by the Constitution of the United States.

3. That since such privilege is not secured to the plaintiff by the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States has no application.

4. That the said provisions of the Constitution of the State of Tennessee and of the Code of Tennessee are valid and binding on the plaintiff.

5. That the Court expressly declares that the plaintiff is not entitled to vote in the special election for members of Congress to be held on September 13, 1939, in the Third Congressional District of Tennessee with-

out the prepayment of poll tax, he being legally liable therefor in the event of the validity of such statutes of Tennessee as apply to him.

HARRIS & BROWN,
By (s) CRAMPTON HARRIS,
Attorneys for Appellant, Henry Pirtle,
727 Frank Nelson Building,
Birmingham, Alabama.

HERBERT G. B. KING,
By (s) CRAMPTON HARRIS,
Attorney at Chattanooga, Tenn.

ORDER EXTENDING TIME

It appearing to the Court that an appeal in captioned cause has been made from the Judgment of this Court to the Circuit Court of Appeals, Sixth Circuit; and

That on account of numerous pressing matters incident to the session of court in progress, the Clerk has not been able to complete the preparation of the record on appeal so that it may be filed within the period prescribed for such filing of appeal, and therefore requests an extension of twenty days, as is provided by statute.

The Court, fully understanding the premises as recited, is pleased to grant the extension requested.

Enter:

(s) ELMER D. DAVIES,
U. S. District Judge.

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA, }
MIDDLE DISTRICT OF TENNESSEE } ss:

I, L. B. Ormes, Clerk of the District Court of the United States in and for the Middle District of Tennessee, do hereby certify that the foregoing pages contain a true, correct and complete record as called for in the praecipe, copy of appeal bond and Designation of Contents of Record on Appeal as the same appears from the records and files in this office.

WITNESS my hand as Clerk and seal of said Court at Nashville, Tennessee, this the 16th day of November, 1939.

(SEAL) L. B. ORMES, *Clerk.*

PROCEEDINGS IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(December 11, 1940—Before: Hicks, Simons and Hamilton, JJ.)

This cause is argued by George S. Brown and Crampton Harris for Appellant and by Nat Tipton for Appellees and is submitted to the court.

DECREE

(Entered March 8, 1941)

Appeal from the District Court of the United States for the Middle District of Tennessee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Tennessee, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed March 8, 1941)

Before HICKS, SIMONS and HAMILTON, Circuit Judges.

HICKS, Circuit Judge. On September 13, 1939, a special election was held in the Third Congressional District of Tennessee to fill a vacancy in the House of Representatives of the United States. Appellant, Henry Pirtle, possessed all the qualifications required by the laws of Tennessee to entitle him to vote in this election except that he had not paid his poll tax. For this reason the judges of election declined to allow him to vote.

The question is, whether the Constitution and statutes of Tennessee, which make the payment of a poll tax a condition precedent to the right to vote for members of Congress, are repugnant to any provisions of the Constitution of the United States.

From an adverse decree, Pirtle appealed.

Article I, Section 2, of the Constitution of the United States is as follows:

> "The House of Representatives shall be composed of Members chosen every second year by the People of the Several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

It is not to be doubted that the people of a state may through a constitutional convention prescribe the qualification of voters and the limitation of the elective franchise, provided of course that the privileges and immunities of the voters guaranteed to them by some provision of the Federal Constitution are not violated. See *Breedlove* v. *Suttles*, 302 U. S. 277, 283. The Tennessee Constitution was adopted in 1870 and Article IV, Sec. 1, thereof, fixed the qualifications for voters as follows:

> "Every male person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein he may offer his vote for six months

> next preceding the day of election, shall be entitled *to vote for members of the General Assembly,* and other civil officers for the county or district in which he resides; and *there shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election, where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the Legislature shall prescribe, and at such time as may be prescribed by law, without which his vote cannot be received.*" (Italics ours.)

The General Assembly includes, of course, the Senate and the House of Representatives, the latter being the most numerous branch of the Legislature.

Pursuant to this constitutional provision, the Legislature (Sec. 2027 of the Code of Tennessee) enacted the following statute,—

> "Every person in this state, who is otherwise, a qualified voter under the constitution and laws, shall, as a condition precedent to the exercise of voting, furnish to the judges of election satisfactory evidence that he has paid the poll tax, if any, assessed against him for the year next preceding the election, not later than sixty days prior to the day of said election, without which his vote shall not be received."

Article IV, Section 1 of the Tennessee Constitution, above quoted, was adopted by a vote of fifty-six yeas and eighteen nays. The principal objection to it, as indicated by the separate protests (pp. 178 et seq. of the Journal of the Proceedings of the Convention) of Mr. Staley, Mr. Gibson and others, members thereof, was that suffrage was a right and not a privilege that could be taxed. Mr. Gibson referred to it as a right such as the right to life, liberty or property. This is not true. It is a political right which the people of a state may appropriately condition through its fundamental law or legislation in conformity therewith. But none of the protestants in their

vigorous denunciation of the provision, advanced the argument presented here, that the right to vote for a member of Congress stems out of Article I, Section 2, of the Federal Constitution.

A pertinent preliminary inquiry is, whether the state has levied a poll tax upon the exercise of the elective franchise. Article II, Section 28 of the Constitution of Tennessee provides that,—

> "All male citizens of this State over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity, shall be liable to a poll tax of not less than fifty cents nor more than one dollar per annum. Nor shall any county or corporation levy a poll tax exceeding the amount levied by the State."

Article XI, Section 12 of the Constitution provides:

> "The State tax derived hereafter from polls shall be appropriated to educational purposes in such manner as the General Assembly shall, from time to time, direct by law."

Pursuant to these constitutional provisions, the Legislature passed the following statute:

> "Every inhabitant between the ages of twenty-one and fifty years, except persons who are deaf, dumb, blind or incapable of labor and of earning a livelihood shall pay an annual poll tax of $1.00 for school purposes, which shall be collected by the trustee of the county and retained in the county where collected and apportioned to the schools of said county in the manner prescribed by law. Liability for poll tax and the exemption therefrom is determined and fixed according to the age of the inhabitant on the tenth day of January of each year."

It is clear enough that these provisions do not levy or assess a poll tax upon voters as a class. Voters are nowhere referred to. It is of course true that a large number of voters would be liable for the tax but it is just as true

that a large number, such as those who are deaf, dumb, blind, incapacitated for labor or over fifty years of age, would not. Upon the other hand, a large class of inhabitants ineligible to vote at all, such as aliens, persons convicted of infamous crimes, persons who have not lived in the state and county for the requisite period of time, and all persons who do not choose to vote, are still liable for the tax.

Again, it is worthy of note that the tax is levied by that section of the Tennessee Constitution dealing with taxation, while the disqualification of the voter for failure to pay it, is found in that section dealing with the qualification of voters.

The collection of the poll tax has always been attended with difficulty because the assessment falls upon many poor people but the state has earnestly insisted upon its collection. As an illustration (Sec. 1559 of the Code) the property taxpayer is not permitted to pay his tax without paying his poll tax at the same time and by the same section every tax collector who permits a violation thereof is held liable for all poll taxes which thus become delinquent.

The collection of the poll tax is stressed because when collected it becomes a part of an educational fund which the state, impoverished by war, began to build up, cherish and protect as a governmental policy, imbedded in the Constitution itself (Article XI, Sec. 12).

Upon the whole, we think it is reasonable to conclude that the provisions requiring the payment of the tax as a prerequisite to voting do not so much connote a levy and assessment as they do an effective method of collection. They do not levy a poll tax upon any voter. They give due recognition to the poll tax assessment laws hereinbefore quoted. They do not disturb any voter who is over fifty years of age, or deaf, dumb, blind or incapacitated. They have their foundation in the idea that the normal voter will protect his franchise by paying his poll tax if it has been assessed against him. We think this is at least a permissible construction which we should

adopt if any constitutional objection may thereby be foreclosed.

But in any event, we are not dealing with the question whether the payment of poll tax as a prerequisite to voting violates some natural right or fancied political right. The inquiry is, whether such provision denied any privileges or immunities protected by the Federal Constitution. We have already seen that Article I, Section 2 of the Constitution of the United States guaranteed to the elector for members of Congress no other privileges than those accorded him by the state as an elector for the most numerous branch of the state legislature. But appellant goes beyond this. He urges that the quoted provision of Article IV, Section 1 of the Constitution of Tennessee and Section 2027 of the Code violates the "privileges and immunities" clause of the Fourteenth Amendment; that his right to vote for a member of Congress is not taxable, regardless of whether the amount of the tax imposed is trifling or substantial. We need not labor the point. It has been conclusively decided against appellant in *Breedlove* v. *Suttles,* supra (302 U. S. 283) where the court said:

> "2. To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate. *Minor* v. *Happersett,* 21 Wall. 162, 170, et seq. *Ex parte Yarbrough,* 110 U. S. 651, 664-665. *McPherson* v. *Blacker,* 146 U. S. 1, 37-38. *Guinn* v. *United States,* 238 U. S. 347, 362. The privileges and immunities protected are only those that arise from the Constitution and laws of the United States and not those that spring from other sources. *Hamilton* v. *Regents,* 293 U. S. 245, 261."

The decree appealed from is affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *Henry Pirtle* v. *Henry Brown, et al,* No. 8466, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 15th day of May, A. D., 1941.

J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(SEAL)